IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

CRL.A.No. 409 of 2002(C)

SC.3/2001 of SESSIONS COURT, THRISSUR DT..23.5.02.
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APPELLANT: ACCUSED
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1. RAMAKRISHNAN, S/O. CHATHU,
KOTTEKKADU HOUSE, ST. THOMAS NAGAR,
ARANATTUKARA VILLAGE AND DESOM,
THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.MP. NO.38673/2002 IN CRL.A. 409/20002

DISMISSED

27.06.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.A.NO. 409 OF 2002

DATED THIS THE 27th June 2007

JUDGMENT

The appellant stands convicted for the offence under Sections 448, 323 & 354 I.P.C. and Section 3(1)(xi) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.2500/- and in default to undergo simple imprisonment for three months for the offence under Section 3 (1)(xi) of the SC. & ST (Prevention of Atrocities) Act and imprisonment for two months for the offence under Section 448 IPC and a fine of Rs.500/- and in default to undergo simple imprisonment for one month for the offence under Section 323 IPC. The prosecution case is that on 20-4-2000 at 9.30 a.m. while the prosecutrix belonging to Mannan community, which is a scheduled caste, was sitting in her house, the accused, immediate neighbour, who is not a person belong to scheduled caste & scheduled tribe, entered into the house through the back door and forcibly kissed her face and bit her lips and nose.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 to 4 and EXts.P1 to P4. PW3, the Doctor, who issued Ext.P2 wound certificate , has noted two abrasions over the tip of the nose. The court below convicted the accused on the basis of the evidence of PWs.1 and 2, the prosecutrix and a resident of the nearby house who witnessed the incident. It is contended by counsel for the revision petitioner that no objective evidence has been adduced in order to prove that the prosecutrix belonged to the scheduled caste and also to establish the fact that the accused is not a member of the scheduled caste and scheduled tribe. I find that the contention of the counsel for the appellant has to be upheld as the oral evidence alone in this regard is not sufficient as the documentary evidence would be available. Hence, I find that conviction for the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has to be set aside. For the rest of the offences, I find that the evidence of Pws.1 and 2 is not vitiated by any infirmities. The injury sustained stands proved by the evidence of PW3, the Doctor and

Ext.P2 wound certificate. No contradictions with respect to the evidence of PWs.1 and 2 have been brought out with respect to the previous statements. I find that the ingredients for the offence under Section 323 I.P.C. has not been established as it appears that the intention is only to outrage the modesty of the prosecutrix. Hence, the conviction under Section 354 I.P.C. alone is confirmed. The accused is acquitted for the rest of the offences alleged.

It is pointed out that the accused/appellant had undergone pre-trial detention for a period of 15 days. In the circumstances, the accused is sentenced to pay a fine of Rs.5,000/- for the offence under Section 354 IPC and in defualt to undergo simple imprisonment for two weeks . The Crl.appeal is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.A. NO. 409 OF 2002

JUDGMENT

27-6-2007